

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1150065
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Max M. GURY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1745

Max M. GURY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 19 June 1968, an Examiner of the United States Coast Guard at New York, N.Y. suspended Appellant's seaman's documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an electrician on board SS EXCHESTER under authority of the document above captioned Appellant,

- (1) on or about 17 October 1967, wrongfully attempted "to commit larceny of ship's property by preparing to have electrical components removed from the electrical shop, while the vessel was at Catania, Italy" and
- (2) on or about 25 November 1967 wrongfully failed to report for a fire and boat drill at sea.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of EXCHESTER and the testimony of one witness, the first assistant engineer of the ship.

In defense, Appellant offered in evidence his own testimony.

After the hearing on 20 March 1968, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of two months outright plus four months on twelve months' probation.

The entire decision was served on 25 June 1968. Appeal was

timely filed on 26 June 1968 and perfected on 12 August 1968.

FINDINGS OF FACT

On all dates in question, Appellant was serving as electrician on board SS EXCHESTER and acting under authority of his document.

On 17 October 1967, at Catania, Italy, Appellant was detected by the first assistant engineer, who was looking through an exhaust grating into the electrical shop, accompanied by two native workmen inside the shop. One of these men was removing objects from the shelves in the shop. When the first assistant arrived at the door to the shop he found one of the men lifting a burlap bag onto a scale.

After order the two strangers off the ship the officer ordered Appellant to empty the bag and restow the contents, which proved to be ship's electrical equipment and spare parts for winches.

When Appellant was brought before the master and an Official Log Book entry, which accused him of attempting to sell ship's property, Appellant's only reply was "Nobody saw me take any money."

On 25 November 1967, when a fire and boat drill was held at about 1300, Appellant wrongfully failed to appear at his station.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Appellant's notice of appeal urges the following grounds:

- (1) "Evidence in hearing which did not appear on ship's charge and hearing or in log book entries;"
- (2) "Contradictions in witness Mr. Miller's statements at hearing;" and
- (3) Introduction of witness name, Mike Catsocelis, in hearing which name was never mentioned in any charges heretofore."

Appellant submitted a memorandum in support of these grounds. Details of this memorandum will be discussed in the "Opinion" below.

After receipt of the transcript of proceedings, Appellant submitted a document labeled "Exceptions To Transcript of Hearing." The first two "exceptions" are directed to statements made by Appellant himself in his opening statement (R-8,9), before any evidence was introduced, in which he referred to his "room mate." His "exceptions" identify the "room mate" as "Mike Catsocelis."

The third "exception" says that where the transcript reads, at R-9, 11. 15-17:

MR. GURY: On my left thumb. I had cut my left thumb and when he came to Israel, the hand was infected and I received injections for it.

it should read:

"I later found out that the first engineer, also the purser they went out in Greece together and they were very intimate with Mike Catsocelis.

The fourth "exception" is that where the transcript reads, at R-9, 11. 19-21:

MR. CURY: They went out together, and they met outside. The purser even boasted to me and said, "I'm going out with the man that you are fighting with."

it should read:

"They went out together, and they met outside. The purser even boasted to me and said, "I'm going out with the men (Mr. Miller and Mr. Catsocelis) that you are fighting with."

The fifth "exception" is that reference at R-15 in the testimony of the first assistant engineer to the fact that one Mike Catsocelis, the "reefer engineer," had just reported to him that Appellant was in the electrical shop with two strangers was the first introduction into the case of the name of this man as a witness to anything.

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant's "exceptions" to the transcript will be discussed

first.

The first two "exceptions" do not assert that the transcript is in error. They merely provide the name of the "room mate" whom Appellant himself had not identified. It may be admitted that when Appellant, in his opening statement, referred to his "room mate" he meant a man named "Mike Catsocelis." This does not affect the merits of the case, nor does it imply that the record is wrong.

The third and fourth "exceptions" do appear to charge inaccuracies in the transcript. It is first noted that the inaccuracies are asserted to appear in Appellant's own opening statement, and they are also asserted to have omitted references by him to one "Mike Catsocelis." Apart from the fact that Appellant's "exceptions" are naked, unsworn assertions, it seems to me that a simple comparison of the texts of the transcript with the texts of Appellant's proposed changes shows that there is no reason for even opening a suspicion that the reporter did not correctly place in the record what Appellant actually said, rather than what Appellant now says he said.

Appellant's fifth "exception" to the transcript has an unusual ring to it. It is not truly a complaint about the accuracy of the transcript but about the introduction of the name "Mike Catsocelis" into the proceedings for the first time. (Catsocelis had not been mentioned in the Official Log Book entry on the matter of what happened in the electrical shop, nor had he, understandably, been mentioned in the charges and specifications preferred against Appellant). More will be said on this later, but it must be noted that the unusual quality of this "exception" is that it coupled with Appellant's first four "exceptions" which call upon me to find that appellant's own earlier references to his "room mate" should be construed to be references to "Mike Catsocelis" and that his earlier allegations of "intimacy" of persons with each other should be found to include intimacy with "Mike Catsocelis." If there had been any merit to any of appellant's first four "exceptions," the claim of the fifth would have to be disallowed anyway, because it was Appellant himself who first interjected a "room mate" named "Mike Catsocelis" into the proceeding.

All of Appellant's asserted "exceptions to the transcript," however viewed, do not constitute an assertion of error.

II

Appellant's original first ground for appeal, that there was evidence introduced at the hearing which did not appear "on ship's charges and hearing or in a log book entry" is supported in his memorandum as follows:

At the hearing on March 20, 1968, I pointed out that the cause of the trouble was actually Mr. Mike Catsocelis, and to my surprise this same individual was introduced as a witness, although his name never before appeared in any of the charges made against me.

The fact is that Mike Catsocelis did not appear as a witness against appellant. But to construe Appellant's complaint about reference to this person in the most favorable light, since appellant has chosen to represent himself both at the hearing and on appeal; Appellant's point is understood, for the purposes of this appeal, as meaning that the evidence adduced relative to the report made to the first assistant engineer by Mike Catsocelis that Appellant was in the electrical shop with two strangers, should have been excluded from consideration by the Examiner.

It is true that under criminal procedure rules of evidence the testimony of the first assistant engineer to the effect that Mike Catsocelis had told him that Appellant was in the electrical shop preparing ship's property for removal from the ship would have been excluded from evidence. However, there are two reasons why this is not found error in the instant case.

The first is that "hearsay" as such need not be excluded from consideration in an administrative proceeding such as this, The requirement is only that the findings must not be based upon "hearsay alone."

The second is that appropriate questioning could have elicited evidence that a report was made, that as a result of the report the first assistant went to the scene, and that he saw what he saw and did what he did. His eyewitness testimony alone is sufficient predicate for the finding that Appellant was engaged in the wrongful act alleged.

III

Appellant's second point deals with alleged inconsistencies in the testimony of the first assistant engineer.

The first is that at the time of the "logging" on the ship he did not mention Catsocelis, while at the hearing he testified that it was a report from Catsocelis that prompted him to make his inspection. If this is an inconsistency it is of no significance. It does not matter from whom the witness received a report, or whether he received one. The Examiner accepted his testimony as to what he saw and did.

The other inconsistency is that according to the log entry the

first assistant dumped the contents of the sack and ordered Appellant to restow the contents, while at hearing he testified that he ordered Appellant to empty the sack and restow the contents. This inconsistency is not fatal, since Appellant admitted that he was in the shop with two strangers when the first assistant arrived. R-25-26. He admitted that the strangers asked him "if I wanted to sell them anything, if I have cigarettes... " R-32 (Emphasis added.) When asked, "Did you put any objects that were in a gummy [sic] sack bag on the shelves?" he replied, "No, they were brake coils..." R-34.

The Examiner could properly take all this as tacit corroboration of vital parts of the first assistant's essential testimony, and he did.

IV

Appellant's third point in his notice of appeal is an objection to the "introduction of witness name, Mike Catsocelis, in hearing which name was never mentioned in any charges heretofore." As has been mentioned before, it was Appellant who first interjected this person into the proceedings, and insists on appeal that his references to his "room mate" be recognized as references to a man of that name. There seems to be no merit in this complaint.

V

In the Memorandum supporting his notice of appeal, Appellant also raised this point:

The Captain, Mr. Pagano, refused to enter my actual statements on the charges against me and at that time told me to "shut up" and he only put part of my statements of paper which naturally distorted the gist of my statements.

It is noted that the Examiner, in his opinion, appears to stress the fact that at the time of "logging" all Appellant said was, "Nobody saw me take any money." D-4.

Appellant testified in his own behalf at the hearing and made no claim that the log entry did not correctly record his statements. He cannot be heard for the first time on appeal that his statements were distorted.

VI

Appellant does not on appeal attack the findings as to his failure to attend fire and boat drill, so that no discussion of

that matter is required.

CONCLUSION

The Examiner's findings are supported by the necessary substantial evidence, and Appellant's arguments on appeal provide no reason to disturb them.

ORDER

The order of the Examiner dated at New York, N.Y. on 19 June 1968, is AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 6th day of December 1968.

Appeals

- Objection to log entry not timely

Hearsay evidence

- Consideration of by examiner
- Not sufficient basis for finding

Log entries

- Objection on appeal not timely

Record of proceedings

- Held to be accurate

Testimony

- Contradictory
- Discrepancies minor
- Self contradictory